IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 26792 of 2007(M)

PETITIONER:

V.P. MAHESH, S/O. O.T. PILLAI,
M-4, CHOICE PARK, ELAMAKKARA, COCHIN-26.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIATE, TRIVANDRUM.

2. DISTRICT COLLECTOR, PATHANAMTHITTA.

3. TAHSILDAR,
THIRUVALLA TALUK OFFICE, THIRUVALLA,
PATHANAMTHITTA DISTRICT.

4. VILLAGE OFFICER,
VILLAGE OFFICE, THIRUVALLA, PATHANAMTHITTA DIST.

BY GOVERNMENT PLEADER SRI.V.K.SABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON 20/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 26792 OF 2007 M
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Dated this the 20th day of November, 2007

J U D G M E N T

Petitioner had purchased a property having an extent of 7.25 ares in a public auction conducted by the South Indian Bank Ltd, Thiruvalla Branch, to which the property was mortgaged. Ext.P1 is the sale certificate issued by the Authorised Officer of the Secured Creditor Bank. Petitioner submits that thereafter, he had applied to the 3rd respondent-Tahsildar to effect mutation of the property in his name and thereupon Tahsildar obtained legal opinion from the Additional Government Pleader, who opined that if there is no appeal pending against the order of the Debts Recovery Tribunal, mutation could be effected.

2. In view of this, a certificate from the Debts Recovery Tribunal that no appeal was pending was directed to be produced and the petitioner made a request to the Registrar, Debts Recovery Tribunal, Ernakulam for a certificate. To this, he got Ext.P6 reply stating that there is no provision to issue a certificate as required by the petitioner. However, the Bank issued Ext.P5 letter stating that there is no appeal pending in respect of the property covered by Ext.P1 sale certificate. Even

thereafter, mutation was not effected and hence this writ petition was filed praying for directing respondents 3 and 4 to effect mutation in respect of the property covered by Ext.P1 sale certificate.

3. On behalf of the respondents, Government Pleader entered appearance and 3rd respondent states that an application for effecting mutation in his name was made by the petitioner to the 4th respondent. In para 4 of the counter affidavit, he has given a list of 13 civil cases, which are pending in the Munsiff's Court, Thiruvalla, Sub Court, Thiruvalla and Sub Court, Kottayam. It is stated that in some of these cases, attachment orders have also been passed by the Civil Court. According to the 3rd respondent, it is only on account of the pendency of these litigations that they were not in a position to effect mutation of the property. It is also stated that the Bank took possession of the property without the knowledge of the 2nd respondent, as stipulated in Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. On going through the said provision, I do not find any

obligation on the part of the Bank to have taken possession only with the knowledge of the respondents.

4. Counsel for the petitioner only sought for a direction to the 3rd respondent to consider the application made by the petitioner for effecting mutation in his name on the strength of Ext.P1. He would submit that the 3rd respondent is bound to take a decision on the application made by him.

5. The petitioner submits that the 3rd respondent has not passed an order on the application made by him for effecting mutation in his name. However, counter affidavit discloses that the application was in fact made to the 4th respondent-Village Officer.

6. The fact that certain civil cases are pending in respect of the property with interlocutory orders including attachment, it need not stand in the way of the respondents 3 and 4 from considering the application filed by the petitioner for mutation. As rightly pointed out by the counsel for the writ petitioner, the procedure in this behalf is laid down in the Transfer of Registry Rules, 1966. Rule 16 of the said rule provides that even if

mutation is effected in the name of the petitioner, that will not affect the legal rights of any person in respect of the lands covered by the application for carrying out mutation in his favour. The rule makes it clear that the question of legal rights in respect of the property is always subject of adjudication by Civil courts and pattas will be revised from time to time in accordance with judicial decisions. Therefore, prima facie, it would appear that inspite of the pendency of the suits before the Civil Courts, mutation can be effected by the respondents.

7. In the nature of the relief that is sought by the petitioner, a final adjudication on the permissibility of effecting mutation in the petitioner's favour is not called for at this stage. In terms of the provisions of the rules, 3rd respondent is obliged to take a decision on the application made by the petitioner for effecting mutation. Although petitioner has submitted an application in this behalf immediately after Ext.P1 sale certificate was issued, admittedly, a decision in this regard has not been taken. If a decision is taken, which is adverse to the petitioner, the petitioner has a right to pursue the same before the

appropriate authorities as per Rule 18 of the Rules. In this case, it is noticed that according to the 3rd respondent an application for effecting mutation was received by the 4th respondent. However, since the application is still pending without orders, and as the 3rd respondent is the appropriate authority in terms of the Rules, the 4th respondent can transmit the application of the petitioner to the 3rd respondent for appropriate orders.

8. Accordingly, I dispose of this writ petition directing that within three weeks from the date of receipt of a copy of this judgment, the 4th respondent shall transmit the application for effecting mutation submitted by the petitioner to the 3rd respondent. On receipt of the application as directed above, a final decision in this matter shall be taken by the 3rd respondent as expeditiously as possible, at any rate within two weeks of receipt of the application.

Petitioner shall produce a copy of this judgment before the 3rd and 4th respondents for compliance.

ANTONY DOMINIC, JUDGE.

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